

memorandum

National Nuclear Security Administration
Los Alamos Field Office
Los Alamos, New Mexico 87544

DATE: FEB 13 2013
REPLY TO:
ATTN OF: Michael S. Duvall
SUBJECT: New Off-Site Fresh Pursuit and Recovery

TO: Michael A. Lansing, Associate Director, Security & Safeguards, LANS, MS-G729

Reference:

1. Contract No. DE-AC06-05NA25396, Los Alamos National Security, LLC (LANS) and the Department of Energy, National Nuclear Security Administration

The attached Memorandum of Understanding (MOU) on Off-Site Fresh Pursuit and Recovery is in effect immediately. With this agreement the following actions are required:

1. Communications. Establish procedures for contacting and communicating with the New Mexico State Police and the Los Alamos Police Department. These two agencies represent the primary law enforcement agencies required to implement the terms of the MOU.
2. Exercises. To ensure all responses are consistent with this agreement, the Los Alamos National Laboratory must conduct a table top exercise by September 30, 2013. A full scale exercise must be conducted no later than February 28, 2014.
3. Equipment and Training. Ensure that all Protective Force teams are properly equipped and trained to perform the fresh pursuit and recovery mission.

If the Contractor believes the Performance Direction violates Contract No. DE-AC52-06NA25396 Clause H-2 entitled "*Performance Direction*"; the Contractor shall suspend implementation of the Performance Direction and promptly notify the Los Alamos Site Office (LASO) Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notification to the Contracting Officer shall be confirmed in writing within ten calendar days of the oral notification. To contact the LASO Contract Office, call (505) 606-0249.

If you have any questions or concerns, please contact John Mitsunaga, of my staff at (505) 606-0036.



Michael S. Duvall
Assistant Manager
Safeguards & Security

Attachment

cc w/attachment:

S. DeRoma, SOCS, NA-00-LA
S. Counce, SOCS, NA-00-LA
P. Valdez, S&S, NA-00-LA
J. Mitsunaga, S&S, NA-00-LA
W. Gentile, S&S, NA-00-LA
J. Killeen, PS-DO, LANS, MS-G729
W. Nelson, PS-1, LANS, MS-733
K. Freeman, PS-SOC, MS-G724
S. Starkovich, PS-SOC, MS-G724
J. Lucero, PS-SOC, MS-G724
Records Center, LASO

S&S: 025-13

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE LOS ALAMOS SITE OFFICE,
NATIONAL NUCLEAR SECURITY ADMINISTRATION,
DEPARTMENT OF ENERGY,**

THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

AND

THE LOS ALAMOS COUNTY POLICE DEPARTMENT

FOR

OFF-SITE FRESH PURSUIT AND RECOVERY

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I. INTRODUCTION:

This Memorandum of Understanding (MOU) between the Department of Energy (DOE) National Nuclear Security Administration (NNSA) Los Alamos Site Office, (hereinafter referred to as "LASO"), the New Mexico Department of Public Safety (hereinafter referred to as "NMDPS") and the Los Alamos County Police Department (hereinafter referred to as "LAPD"), establishes a cooperative agreement to clarify how the parties will assist each other during an off-site pursuit and/or recovery operation as a result of the theft, diversion, or unauthorized control of Special Nuclear Materials (SNM) from the Los Alamos National Laboratory (hereinafter referred to as "LANL"). This MOU facilitates implementation of the Atomic Energy Act of 1954, Presidential Decision Directives (PDD) 39 and 62, National Security PDD 28, Homeland Security Presidential Directive 5 (HSPD-5), the National Response Plan (NRP) and the National Incident Management System (NIMS).

Fresh Pursuit is defined as: Pursuit (with or without a warrant) for the purpose of preventing the escape or affecting the arrest of any person who commits a misdemeanor or felony or is suspected of having committed a misdemeanor or felony. Fresh pursuit implies pursuit without unreasonable delay but need not be immediate pursuit. (Although fresh pursuit implies pursuit without unreasonable delay, to prevent the escape or to arrest fleeing suspected criminals who are in unauthorized control or possession of nuclear weapons, weapons components, and/or special nuclear material (SNM), such pursuit must be effective immediately).

II. PURPOSE:

A. The purpose of this MOU is to:

1. Provide a clear basis for contingency response planning, coordination, and cooperation between NMDPS, LAPD, and the LASO/LANL within the State of New Mexico to pursue suspected criminals across jurisdictional lines;
2. Facilitate effective communication and exchange of relevant information; and
3. Assure timely, reliable, effective decision making and response actions.

III. OBJECTIVE:

The objective will be to, as soon as practical, apprehend suspects, neutralize the threat, and, secure the perimeter surrounding the vehicle and/or area containing SNM until the appropriate recovery operations are initiated.

III. AUTHORITY AND JURISDICTION:

- A. This MOU is established pursuant to the DOE Organization Act, 42 U.S.C. § 7256 (a), Atomic Energy Act of 1954, PDDs 39 and 62, National Security PDD 28, the Homeland HSPD-5, the NRP and the NIMS.
- B. DOE Protective Forces (PF) are authorized under both Title 10, Part 1047 of the Code of Federal Regulations and § 161k, of the Atomic Energy Act of 1954, as amended by 42 U.S.C. § 2201k, to carry firearms and make arrests without a warrant in the protection of nuclear materials, facilities and related activities, and to continue pursuit across jurisdictional boundaries.
- C. The LAPD is responsible for law enforcement activities throughout Los Alamos County including the Los Alamos National Laboratory. LAPD is the primary law enforcement agency responsible for pursuit until assumed by the NMDPS outside of Los Alamos County.
- D. The NMDPS will become the lead law enforcement agency for managing pursuits that extend beyond the borders of Los Alamos County but remain within the State of New Mexico.
- E. This agreement does not limit the Federal Bureau of Investigation (FBI) or other cognizant federal law enforcement agency from asserting jurisdiction or in directing pursuits that cross state lines.
- F. Detainment and arrest of suspects will be conducted by New Mexico law enforcement agencies, with the PF providing secondary assistance as applicable, unless the FBI or other federal law enforcement agency is on scene and asserts jurisdiction. Arrested suspects will be turned over to Federal authorities (FBI or U.S. Marshals) as soon as practicable.
- G. When other Federal law enforcement authorities [e.g. FBI or United States Marshal] are involved in the apprehension or arrest of a suspected criminal (off LANL property) responding NMDPS and LAPD officers will cooperate with Federal law enforcement authorities to assist in their investigation and arrest of individuals for Federal violations.
- H. Each party to this agreement shall be responsible for identifying contact information to the remaining parties for use during an event.

IV. FRESH PURSUIT GUIDELINES:

- A. Use of Force – Use of force will be in accordance with each agency's policies.

LASO/NMDPS/LAPD MOU
Off-Site Fresh Pursuit and Recovery

- B. Safety – Each agency involved in fresh pursuit and recovery operations shall abide by each agency policy. Public and officer safety is a primary consideration when engaging in the fresh pursuit of a suspected criminal.
- C. Hostages – If hostages are present in a pursuit situation in which recovery of Special Nuclear Material (SNM) is involved, the safety and welfare of the hostages must be considered; however, due to the ramifications of unauthorized use of SNM to national security, the public, and the environment, the hostages' presence must not deter or impact immediate pursuit and recovery of the SNM.
- D. Methods of Pursuit.
 - 1. Vehicular pursuit will be accomplished with each agency's assigned vehicles that are equipped with the standard visual and audible emergency response equipment. Vehicles should be marked in a manner easily recognized by multiple agencies involved.
 - 2. Roadblocks will not be used to apprehend persons suspected of misdemeanors and will only be used under exigent circumstances. Roadblocks shall be authorized by the lead agency managing the pursuit according to that agency's policy.
 - 3. Aerial assistance will be coordinated through NMDPS. Aerial capability will be used for observation, reporting, and potential deployment of forces or special equipment.
 - 4. Tactical foot pursuit will be coordinated by the primary lead agency. All officers will display the appropriate agency's uniform, insignia, shield and credentials for friend or foe identification.
 - 5. If suspects discard item(s), at anytime during the pursuit, PF officers will be notified immediately so that they may secure the item(s) without delay.
 - 6. Until DOE assets are recovered, at least one PF unit will remain in pursuit until the pursuit is concluded.
- E. Communications and Coordination.
 - 1. The initial request for assistance will come from the PF Central Alarm Station (CAS) dispatch center to LAPD using emergency telephone system (911) or direct line. Radio bridging capability will be established between the PF and LAPD officers.
 - 2. The nature of the emergency will be communicated with description of the fleeing suspect and/or vehicle, the alleged criminal violation, and the location/direction of travel.
 - 3. LAPD is primarily responsible for notifying NMDPS of pursuit situations; NMDPS will notify any additional jurisdictions necessary to resolve the pursuit.
 - 4. Multiagency communications will be managed by each agency dispatching center.
 - 5. Each party to this agreement is responsible to keep the other agencies updated with current contact information and procedures.

F. Command and Control.

Each participating agency will follow their command and supervision structure and coordinate decisions through the primary jurisdictional lead. Control and dispatch centers will track the progress of the pursuit. The Protective Force is controlled by the Central Alarm Station and Secondary Alarm Station (505 667-4437/667-4438). LAPD is controlled by dispatch desk (505 662-8222/911). NMDPS is controlled by Santa Fe District (505 827-9300).

- G. Immediate notification of SNM/DOE asset recovery –** Any agency that recovers SNM or DOE assets shall immediately notify the LANL Emergency Operations Center and the Federal Bureau of Investigation (FBI) and provide the location of the recovered property.

V. POST PURSUIT:

Jurisdictional Control: Arrangements will be made to hand over post pursuit criminal investigations to the FBI. The appropriate LASO/LANL officials will respond and take control of the DOE assets and SNM when released through the appropriate chain of custody. Accountability and security arrangements will be made by DOE/NNSA Federal officials.

VI. ADDITIONAL TERMS AND LIMITATIONS:

- A.** This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
- B.** This MOU is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either party. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.
- C.** This MOU in no way restricts ANY of the parties from participating in any activity with other public or private agencies, organizations, or individuals.
- D.** Subject to the Freedom of Information Act (5 U.S.C. 552), decisions on disclosure of DOE/NNSA information to the public regarding projects and programs referenced in this MOU shall be made by NNSA following consultation with the other party.

VII. AMENDMENT AND TERM:

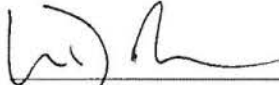
- A. This MOU will be subject to changes and modifications required by the Homeland Security's Final National Response Plan. Any changes or modifications must be agreed upon by the parties as provided for in Paragraph B. of this section.
- B. This MOU shall become effective on the date when the last party to sign executes the MOU and sends notice to the other parties that it has done so. It shall remain in effect for a 5- year term from the effective date, unless terminated earlier as provided herein. This MOU may be amended by written agreement of the parties. This MOU may be terminated by mutual written agreement of the parties, or by either party upon 60 days written notice to the other parties.
- C. No other agreements existing between the LASO, the NMDPS and the LAPD are affected, negated, or superseded by this agreement.
- D. The procedures and protocol in this MOU will be exercised annually with all applicable law enforcement agencies to ascertain the effectiveness and to revise, update or amend existing MOUs as required. The extent or complexity of NMDPS and LAPD participation in the annual exercise shall be coordinated in advance.

VIII. NEW MEXICO TORT CLAIMS ACT:

NMDPS shall only be liable as determined by a New Mexico Court for its Activities conducted pursuant to this MOU in accordance with the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq., as amended.

IX. ACKNOWLEDGEMENT:

The undersigned agree to this MOU and recognize each agency status as a friendly force identified in the DOE/LANL Site Safeguards and Security Plan.



Wayne Torpy
Police Chief
Los Alamos Police Department

1-17-13

Date



Harry Burgess
County Administrator
Incorporated County of Los Alamos

1/17/13

Date



Gordon E. Eden Jr.
Cabinet Secretary or designee
Department of Public Safety
State of New Mexico

12/21/12

Date



Kevin W. Smith
Manager
Los Alamos Site Office
National Nuclear Security Administration

12/19/12

Date